87-1539

SUPREME COURT, U.S.
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CLERK

CASE NO.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

RONALD L. BRANSON,

Appellant

v.

PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

ON APPEAL FROM THE

APPELLATE DEPARTMENT OF THE SUPERIOR COURT

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

JURISDICTIONAL STATEMENT

RONALD L. BRANSON
Appellant, Sui Juris
In Propria Persona

8643 Kester Avenue
Panorama City CA 91402
No phone

MARCH 15, 1988

QUESTIONS PRESENTED

1. Did the trial court lack subject matter jurisdiction in appellant's criminal case?

2. Is California Penal Code Section 849(a) repugnant to the United States Constitution as applied, by acts of omission, to appellant?

3. Is California Penal Code Section 991(a) repugnant to the United States Constitution on its face and as applied, by acts of omission, to appellant?

4. Is California Vehicle Code Section 10852 repugnant to the United States Constitution as it was applied and enforced against appellant?

5. Is California Penal Code Section 1009 repugnant to the United States Constitution, as it was applied and enforced against appellant?

6. Is California Penal Code Section 1049 repugnant to the United States Constitution as it was applied, by acts of omission, to appellant?

* * *

LIST OF PARTIES

All parties are indicated in the caption.

* * *

NOTE: 28 U.S.C. §2403(b) may be applicable and this document is served upon the State Attorney General. [Supreme Court Rule 28.4(c)]

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IN THE SUPREME COURT OF THE UNITED STATES

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JURISDICTIONAL STATEMENT

OPINION BELOW

The opinion below is a "Memorandum Judgment" by the Appellate Department of the Superior Court of the State of California for the County of Los Angeles, signed by James N. Reese, Acting Presiding Judge; and by concurring judges Abby Soven and Jack M.

Newman, affirming the judgment of conviction against appellant rendered by jury in the Los Angeles County Municipal Court for the Los Angeles Judicial District, Van Nuys Branch. (Appendix A)

JURISDICTION

The nature of the proceeding herein is a criminal conviction by jury of two misdemeanor counts rendered June 27, 1986, which conviction was appealed by appellant to the California Superior Court, Appellate Department.

The Memorandum Judgment of the Appellate Department, affirming the judgment below, was filed and presumably entered on November 18, 1987. (Appendix A) A timely petition for rehearing and/or certification and transfer to the Court of Appeal of the State of California was denied on December 18, 1987. (Appendix B) Notice of Appeal to this Court was timely filed on January 11,

1988, in the Appellate Department of the Superior Court, and on March 11, 1988, in the Los Angeles County Municipal Court, Van Nuys Branch. (Appendix C)

Appellant seeks review by way of appeal to this Court pursuant to Title 28 U.S.C. Section 1257(2).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The relevant portions of the following provisions are quoted in Appendix D:

Art. IV, Sec. 1, U.S. Constitution;

Art. IV, Sec. 2, U.S. Constitution;

Fourth Amendment, U.S. Constitution;

Fifth Amendment, U.S. Constitution;

Fourteenth Amendment, U.S. Constitution;

California Penal Code Section 20;

California Penal Code Section 145;

California Penal Code Section 808;

California Penal Code Section 825;

California Penal Code Section 836;

California Penal Code Section 849(a);

California Penal Code Section 991(a);

California Penal Code Section 1009;

California Penal Code Section 1049;

California Vehicle Code Section 10852.

STATEMENT OF THE CASE

Subject matter jurisdiction. This question supersedes all others, since without subject matter jurisdiction to act, the underlying judgment of conviction must be vacated and the Constitutional challenges of statutes involved rendered moot. It is well established that subject matter jurisdiction can be raised at any time, even for the first time on appeal.[1]

Appellant has been challenging the subject matter jurisdiction of the trial court since before trial commenced. He first brought the matter to the attention of the

1. See Gainsville v. Brown-Crummer Invest. Co., 277 U.S. 54; also Panhandle Eastern Pipe Line Co. v. Federal Power Com., 324 U.S. 635.

trial court by filing on June 9, 1986, under special appearance, a motion entitled "Notice of Motion and Motion to Dismiss for Lack of Jurisdiction; Memorandum of Points and Authorities" wherein appellant discussed the fact that he had not been brought before a magistrate for a probable cause determination, even after having been incarcerated for six days.[2]

2. ...3.) The complaint clearly states that it was filed on May 14, 1986, four days after the accused was incarcerated. Since the original charges shown on the arrest report indicate that the accused was incarcerated on an alleged "FELONY", and, since the accused demanded on numerous occasions to be taken promptly before a magistrate, California statutory law clearly stipulates that "Unnecessary Delay" in the taking of the accused before a magistrate shall constitute a misdemeanor offense upon the person of the accused. (SEE PENAL CODE, Sections 825, 849 and 145.) ¶ 4.) The actual complaint filed clearly reduces the original "FELONY" arrest allegations to "MISDEMEANOR" charges, but does not serve to negate the statutory requirement for taking the accused before a magistrate without unnecessary delay. The accused was arraigned on May 16, 1986, SIX DAYS after incarceration. ... At the arraignment, the accused was not informed that he had a right to a "Probable Cause" hearing during these arraignment proceedings either. All of which constitute a Constitutional violation of the rights of the accused. ¶¶ ... 9.) No "Order to Show Cause" was issued in the absence of an arrest warrant, which is contrary to the mandates of Due Process. ¶ 10.) No "Summons to Appear" was issued, which is also contrary to the

In the Memorandum of Points and Authorities of that Motion, appellant quoted Penal Code Sections 825, 849(a), and 145 (quoted herein in Appendix D) followed by further explanation of the facts of the failure to bring him before a magistrate and how it prejudiced him regarding the "speedy trial clock".[3]

mandates of Due Process. ¶WHEREFORE: for all of the above shown causes, the jurisdiction of the court in the instant case at bar is fatally lost, since the facts show that such jurisdiction over the subject matter and the person of the accused was never properly conferred upon the court by any lawful presentation of a complaint or proper process. [Mo. to Dismiss 6/9/86 pp 3-5]

3. In the instant case, not only did the accused demand to be taken forthwith before a magistrate on numerous occasions, but the officers detaining the accused refused to submit to the demands of the accused and the mandates of the law. This constitutes a willful delay, prejudicing the accused, because the Court has ruled that the 30 day speedy trial rule applies in the instant case since the accused was in custody when arraigned. Since the accused was unlawfully imprisoned for six days and should not have been in custody at the time of arraignment, the effect of this violation of the rights of the accused also extends to denying the accused 15 days time on the speedy trial clock in order to prepare a defense against the accusations which he would have had if he had been given lawful consideration. ¶The right

Appellant then quoted Penal Code Section 836 regarding the authority to arrest without a warrant (see Appendix D) followed by the facts of his case relating thereto.[4] Appellant then completes the Motion with facts and citations of violations of the Fourth Amendment and the lack of subject matter jurisdiction of the trial court.[5]

to a "Probable Cause" hearing is mandated by both Federal Law and California State Law! [Id. pp 7-8]

4. In the instant case, the officers arrested the accused and charged him initially with a felony, even though there was no evidence on the scene to support an accusation of a felony offense. This fact is upheld by the report of the officers attached to the complaint. Thus, charging the accused with the commission of a felony was unwarranted from the outset. The complaint, in and of itself, shows that the charges ultimately brought against the accused were "Misdemeanor" attempt charges, and not of a felonious nature, thus the arresting officers exceeded their authority in charging the accused with offenses which were unwarranted and unsupported by observable facts. [Id. p.8]

5. "The Supreme Court noted initially that the standards and procedures for arrest and detention are derived from the Fourth Amendment and that the 'standard for arrest is probable cause, defined in terms of facts and circumstances sufficient to warrant a prudent man in believing that the [suspect] had committed or was committing an offense.' This standard, like those for searches and seizures, represents a

Appellant points out that the Walters case, cited in Fn.5, states that under Fourth

necessary accommodation between the individual's right to liberty and the State's duty to control crime...." In Re Walters, supra, page 745. (15 Cal. 3d 738, 126 Cal.Rptr 239, 543 P.2d 607) ¶¶ ... The instant case is clear, in that the record shows that no verified complaint has ever been filed with the Court, no affidavit in support of the complaint has been filed, no summons to appear has been issued, no warrant for arrest has been issued and no order to show cause has been issued to satisfy the requirements of DUE PROCESS. ¶"To implement the Fourth Amendment's protection against unfounded invasions of liberty and privacy, the Court has required that the existence of probable cause be decided by a neutral and detached magistrate whenever possible." In Re Walters, supra, page 746, quoting Gerstein v. Pugh. (420 U.S. 103) ¶¶ "There should be no arbitrary deprivation of life or liberty, or arbitrary spoilation of property." Barber v. Connolly, 113 U.S. 27, 31; Yick Wo v. Hopkins, 118 U.S. 356. ¶"When officers detained appellant for the purposes of requiring him to identify himself, they performed a seizure of his person subject to the requirements of the Fourth Amendment...." Brown v. Texas, 443 U.S. 47, (1979). ¶The record of this case, from its outset, shows a repeated history of violations of the common, fundamental, rights of the accused. This record shows damage, injury, and recognizable harm to the accused. This record shows that the accused has been repeatedly subjected to "Hitlerian" torture and "Star Chamber" justice. This record shows clearly that the court is, and has always been, without jurisdiction over either the subject matter or the person, and all involved in this miscarriage of justice are on notice that all "Robes of Immunity" have been removed due to the improprieties committed thus far, and are anticipated in the future by the accused. [Id. pp 9-11]

Amendment requirements, "the standard for arrest is probable cause" and "this standard...represents a necessary accommodation between the individual's right to liberty and the State's duty to control crime." "Probable cause" is the standard for arrest, not merely for a warrant if one is obtained. "Probable cause" is a necessary accommodation under the Fourth Amendment protections, not merely an option. This necessary accommodation was never made in appellant's case.

At the time of filing this Motion to Dismiss, appellant was not aware of the fact that pursuant to California Penal Code Section 808, a Municipal Court Commissioner is not a magistrate (see Appendix D) and by definition of law, such a Commissioner could not have officiated over appellant's case at his first appearance under Fourth Amendment standards. Consequently, the fact is that appellant was NEVER, at any time,

brought before a magistrate for even the possibility of a probable cause determination for his warrantless felony arrest.

The Motion to Dismiss was heard June 11, 1986, before Judge Aviva K. Bobb, of the Los Angeles Municipal Court, a court of limited, and not general, jurisdiction. Because appellant was not aware of the fact that he was NEVER brought before a magistrate, by definition of California law, the motion was argued as being merely a DELAY in taking before a magistrate and not a total failure to do so. Consequently, the proposition that "prejudice must be shown" was argued by the prosecution and picked up by the judge in denying the motion.[6]

6. MR. CARRASCO: Thank you, Your Honor. ¶I don't believe there are any cases which stand for the propositions that the defendant uses in his motion. I believe the Court does have jurisdiction under the Penal Code of the State of California and perhaps some of the arguments propounded by defendant would be better in a civil action rather than a criminal action. I would submit it, and I would on the urging the Court deny this motion. [Footnote continues]

THE COURT: What about the time-for-arraignment issue?
MR. CARRASCO: Your Honor, I believe according to the arrest report, the defendant was...arrested on May 11, 1986, and...he appeared in Division 105 on the 14th for his arraignment.
THE COURT: He didn't appear. He was in custody on the 14th. Arraignment was scheduled for the 14th. He was in custody, and apparently he wasn't able to be located within the jail system.
MR. CARRASCO: He was a miss-out.
THE COURT: So the matter was trailed to the 15th whereupon he again was a miss-out and it was trailed to the 16th.
...
MR. CARRASCO: What is the date of arraignment?
THE COURT: 16th.
MR. CARRASCO: On the 16th -- Your Honor, I believe under the Penal Code there -- even in a case such as this, there is no automatic finding by the Court that the case should be dismissed, ... prejudice must still be shown on the part of defendant...that, in fact, he was prejudiced by -- I don't...know the ...underlying facts. ¶He was a miss-out on those days, but he must still allege some kind of prejudice under the Penal Code....
THE COURT: Mr. Branson, do you wish to respond?
[Appellant at this point repeats what was contained in the motion, i.e., the requirements of Penal Code Section 825, his false imprisonment, inhumane treatment while being held captive against his will, the prejudice resulting to him in shortening the speedy trial time to 30 days instead of 45 days, cutting off 15 days for trial preparation. Appellant then stated the following:]
THE DEFENDANT: ... I put them [Sheriff] on notice, and they did nothing about it, and as far as the allegations set forth that I was lost in the system, I was present and available at every stage. ¶They put me in [manacles]...and I couldn't do otherwise. I was captive behind doors and in the custody of the sheriffs and marshals, and the excuse that I was

The judge did not take into consideration the fact that appellant had not been brought before a magistrate at the time a misdemeanor complaint was filed with the Municipal Court; that there was no judicial determination of probable cause for the arrest or the complaint; that appellant, in fact, had NEVER been brought before a magistrate, and therefore, no court jurisdiction had been invoked in appellant's criminal case.

lost is really no excuse. ¶I believe that the justice system has made terrible shambles of this case, totally, and there is no excuse for it, and I have been severely prejudiced by it. ¶I believe the Court should dismiss on its own motion pursuant to Section 1385 of the Penal Code, and I would further put the Court on notice that if it chooses to proceed, that it loses its judicial immunity and subjects itself to personal suit in this matter, and I place the Court on such notice.
THE COURT: The Court finds that there has been no showing of prejudice based on all of the documents before the Court and statements made to the Court, resulting from the delay in taking the defendant before the magistrate. ¶The Court, basing its rulings on consideration of all of the matters stated in the...motion to dismiss for lack of jurisdiction, denies that motion to dismiss. [Rptrs Trans 6/11/86 pp 14-17]

As a result of the denial of the motion, appellant filed on June 12, 1986, under special appearance, his declaration "Re the Court's Proceeding Without Jurisdiction and With Malicious Prosecution; Request Judicial Notice be Taken Hereof".[7]

7. ...That I have been denied my motion to dismiss for want of jurisdiction, and this Court is proceeding nevertheless to force me to undergo the rigors of an unwarranted trial, to the extreme prejudice against me and that of my witnesses,.... ¶That I have demanded to see a copy of the arrest warrant duly issued against me, to which I am entitled pursuant to Penal Code Section 842, as well as a copy of a sufficient accusatory pleading, which, being a complaint, must be made and subscribed by some natural person and sworn to before some officer entitled to administer oaths, pursuant to Penal Code Section 959.3; that both such demands have been denied and the Court and the prosecution has failed and refused to show me either of said documents. ¶That by proceeding to trial on the basis of failing to show me a valid arrest warrant and sufficient accusatory pleading, and having already denied my right to a probable cause determination by a judicial officer, this Court and the prosecution, as well as any and all complaining witnesses against me are proceeding without jurisdiction to do so, demonstrating their intent to proceed with malicious prosecution, for which declarant will hold them personally liable, outside the cloak of judicial and executive immunity; ¶That under the circumstances of this case, lacking in basic rudiments and elements for a valid and lawful prosecution, the only fair procedure by this Court would be to dismiss the case pursuant to Penal

Appellant brought the Declaration to the court's attention on the day it was filed, and Judge Leslie Dunn, then presiding over the case, refused to acknowledge or act on it whatsoever.[8] The next opportunity to bring the Declaration to the court's attention was on June 16, 1986, before Judge Katherine Stoltz, the trial judge, who like-

Code Section 1385, in the interest of justice; however this Court and prosecution fail and refuse to do so, and are maliciously proceeding against the interests of justice and judicial economy. ¶That your declarant requests, for the record, that this Court take judicial notice pursuant to Evidence Code Section 452 of this declaration and the notice of personal liability stated herein for the violation of the Penal Code, for malicious prosecution, and for failing the interests of justice. [Declaration 6/12/86 pp 1-2]

8. MR. BRANSON: I would ask the court if it's familiar with the declaration that was filed this morning. And I ask the court to take judicial notice thereof, placing this court on notice that since I have not been -- I've demanded and have not received a verified complaint, nor a warrant for my arrest. I see no grounds on which the court may proceed in personum or in rem. And, therefore, I serve notice on the court that it will be civilly liable to me for malicious prosecution, and also serve notice upon the prosecution itself. ¶If you have not seen this declaration filed this morning, I have a copy

wise shunned the Declaration.[9] Although the term "logical order" was used by Judge Dunn, referring to the order in which the motions would be addressed, she wasn't recognizing the fact that subject matter jurisdiction is an issue that supersedes all other issues relating to procedure. It would certainly supersede the issue of amending the complaint, as discussed at the end of Fn.8. If jurisdiction is lacking, complaint amending becomes a moot issue.

here for you.
THE COURT: I'm going to have to take up certain matters in chronological order. [Rptrs Trans. 6/12/86 p.2];
MR. BRANSON: Well, I would like to make clear on the record one thing before we proceed. That I have earlier put this court on notice that it is proceeding without any authority whatsoever --
THE COURT: I'm not going to take that up right now. ¶As I said, I'm going to take up each of the motions in logical order. ¶Right now the motion pending before the court is the People's motion to amend the complaint to add an additional count. ...[Id. p.6]

9. THE DEFENDANT: I would like to call to the court's attention and ask the court if it's aware of the declaration submitted on June 12th, declaration of Ron Branson, regarding the court's proceeding without jurisdiction with malicious prosecution. I'd like to call the court's attention to that, and take judicial notice that I have been denied the basic safeguards

At the time of taking the appeal to the appellate department, appellant was not aware of the fact that magistral proceedings and foundations of due process in our American system.

THE COURT: Wait. Slow down. Is that written pleading here?
THE DEFENDANT: This is a declaration filed June 12th within the record.
THE COURT: Just wait a minute until I see if I can find that. ...
...
THE DEFENDANT: Would you like to have a copy of what has been filed? ...
THE COURT: Yes. ... ¶Doesn't look like I have that in my file. Is this an extra copy?
THE DEFENDANT: You may have it, Your Honor.
THE COURT: Thank you.
THE DEFENDANT: I would just like to call the court's attention to that document and take judicial notice thereof that I've put the prosecution on notice that she is proceeding maliciously, seeking on a fishing expedition, trying to find something to hold me down with, and I would just like to point out that the basic rudiments of our due process in the American system that a person have a right to notice, an opportunity to defend, and I have been demanding to see the warrants for my arrest, the supporting affidavit supporting the probable cause for which I was arrested, and I have been refused to see that. ¶I have asked for a verified complaint which is the [basis] of...sufficiency of a complaint and I have been denied that. And without such documents, a verified complaint, it's faulty and the court has no jurisdiction,... and if it proceeds, it's proceeding without jurisdiction, and therefore submits itself to judicial liability and cannot cloak itself with judicial immunity.
THE COURT: All right. ¶Well, I'm going to have to read these papers. [Rptrs Trans 6/16/86 pp 2-4]

do not invoke the jurisdiction of any court, and that arraignment proceedings are under a court's jurisdiction. Therefore, there is a distinct division of jurisdiction between the magistral determination of probable cause for arrest and the arraignment itself --even if both proceedings are conducted by the same person. Although a magistrate must be a judge (not a commissioner) according to California law[10], he acts strictly in the capacity of a magistrate at the probable cause hearing at which time there is no court jurisdiction and the complaint is merely "laid" before him in that capacity.[11] Only after the judge, sitting as a magistrate, examines the complaint for sufficiency by a determination of probable cause based on the arrest report, other police reports, and the

10. Penal Code Section 808, quoted in Appendix D.

11. Penal Code Section 849(a), quoted in Appendix D.

requisite affidavits attached to the complaint, plus any input from the suspect appearing before him regarding his side of the story (especially if it is not reflected in the papers before the magistrate)--- only after such examination of the complaint is it qualified for filing with a court of competent jurisdiction, at which time the same judge, then sitting as a judge of the court, may conduct the arraignment. If, and only if, the prerequisite magistral examination is conducted, does the court acquire jurisdiction in a criminal case. This is especially true when the arrest is made without a warrant, as in appellant's case.

This subject matter jurisdictional challenge was brought to the attention of the appellate department at oral argument on October 22, 1987, almost an entire month before that court filed its Memorandum Judgment on November 18, 1987, giving the

court ample time to consider the challenge and to follow its judicial responsibility in addressing that issue, which can be brought up at any time -- even on appeal. During oral argument, the court seemed disinterested in the subject matter jurisdictional issue, and as it turned out, it never even alluded to it one way or another in its final decision. (Appendix A) At one point during oral argument, one appellate judge commented "A commissioner is a magistrate", which appellant had to embarrassingly point out to the judge that that is not so under the California Penal Code. Be that as it may, even if a commissioner were a magistrate, the question is "Was the commissioner sitting as a magistrate at the time she was acting in appellant's case?" Clearly, if the commissioner was conducting an arraignment, as reflected by the record, she was not sitting or acting as a magistrate, even if she could have done so according to law!

Since the subject matter jurisdictional challenge is fundamental to this entire case and the appellate court did not address the question whatsoever before ruling on court procedures (which would be moot if the court lacked jurisdiction to act), the issue was again presented in depth, in writing, in appellant's petition for rehearing filed December 3, 1987.[12]

12. ... ¶While the concept of "subject matter jurisdiction" was not argued per se in appellant's Opening Brief, it was brought to this Court's attention at oral argument on October 22, 1987, at the hearing on this appeal. "Subject matter jurisdiction" can be challenged at any time, and although it isn't necessary that it be challenged by any party in order for a court to consider it in the first instance in any case, the matter was brought to this Court's attention prior to its filing its Memorandum Judgment which completely ignored that issue. Unless and until the "subject matter jurisdiction" issue is addressed by law by the Court, all other issues are moot. If the Municipal Court did not have subject matter jurisdiction (i.e. trial jurisdiction) in appellant's case, the validity of the procedures themselves is irrelevant. [Appellant then proceeds to cite law pertaining to California warrantless arrest procedure, mandatory duties thereunder, definition of "magistrate" , the scope of a magistrate's duties, the effect of magistral proceedings on court jurisdiction] ... ¶¶ This Court did not address the subject matter of appellant's warrantless felony arrest and the

mandatory statutory procedures that were to be followed after such an arrest. (Pen. Code Section 849(a) This Court did not explain how the subject matter changed from "a warrantless felony arrest" to "the misdemeanor complaint filed on May 14, 1986." Nowhere did this Court discuss proceedings before a magistrate in appellant's case or how that requirement was met or how it could be eliminated.

The United States Supreme Court recognized that in cases of a warrantless arrest "the suspect's need for a neutral determination of probable cause increases significantly." (Gerstein v. Pugh...420 U.S. 103,114). The California Supreme Court also recognized this increased need under a warrantless arrest. [citing Dragna v. White, 45 Cal.2d 469, 472-473; Williams v. Zelzah Warehouse Co., 126 Cal.App. 28, 30-31...] ¶However, this Court treated the factor of appellant's warrantless felony arrest as insignificant and went on to discuss trial procedures in terms of "reversible error".

Since facts were stated in appellant's Opening Brief, as well as throughout the record showing that indeed appellant was placed under a warrantless felony arrest, and furthermore, since appellant did bring this subject matter jurisdiction challenge before this Court at oral argument on October 22, 1987 (almost a month before the Memorandum Judgment was filed), it was incumbent upon this Court to address that issue before reaching any of the other issues. "Reversible error" is not even a topic for discussion absent subject-matter jurisdiction to commit such "error". Once challenged, subject matter jurisdiction cannot be presumed. The entire Memorandum Judgment [see Appendix A herein] as submitted by this Court is based on the presumption of trial court jurisdiction. "Reversible error" and "abuse of discretion" are irrelevant standards of review absent subject-matter jurisdiction to act. Based on the mandates of law stated herein, there was no jurisdiction to file a misdemeanor complaint with the court, no jurisdiction to conduct an arraignment, no jurisdiction to prepare a docket....

The appellate department's response to that issue was to ignore it and to simply deny the petition altogether. Therefore, the question of subject matter jurisdiction of the trial court in this criminal matter still remains unaddressed by any court.

It is apparent that California law enforcement officers, including police, prosecution, and even judicial, are not aware of Fourth Amendment mandates, or even of California mandates, regarding magistral proceedings prior to any court proceeding. At least in Los Angeles, arraignments have replaced magistral proceedings. The police may arrest someone on a felony charge without a warrant, knowing that they may by-pass a probable cause determination of that

> Furthermore, there was no jurisdiction for a commissioner to act in appellant's case whatsoever, ... This is a serious question of law affecting the validity of this entire case. Until subject matter jurisdiction is shown to exist by law, all "trial proceedings" are void. [Pet. for Reh. 12/3/87, portions from pp 4-10]

arrest by a magistrate by simply unilaterally (with the aid of the prosecutor's office) dropping the charge to a misdemeanor and directly filing a misdemeanor complaint with the Municipal Court, there being no participation in the process by a magistrate whatsoever. The first appearance permitted the defendant is the arraignment, as it was in appellant's case. Meanwhile, the police conduct the full felony custodial arrest and booking procedures, including strip searches and intense wallet and personal effects searches, with torture by taser gun (electrical shock by barbed darts) and other terrorist threats of knocking unconscious, breaking of fingers or limbs and other attacks of brutality, as was done in this case, if the defendant doesn't "cooperate" --meaning if he doesn't submit to their every demand, whether or not it violates Constitutional rights or personal decency

and dignity. The absence of any criminal record whatsoever, as was the case of appellant, makes no difference to being subjected to this kind of treatment by our "peace officers" in Los Angeles.

Los Angeles police officers apparently are trained to take full advantage of Penal Code Section 836, giving them authority to arrest for a felony without a warrant, but to by-pass the concomitant duty and responsibility of taking the arrested person to a magistrate for a probable cause determination of that arrest (Penal Code Section 849(a)). Appellant's arresting officer admitted that he was not aware that he had such a duty, and as long as the courts in Los Angeles continue to cover up that omission, as they have done in appellant's case, police will continue to omit that important step in disregard of the Fourth Amendment as well as California Constitu-

tional and statutory mandates.

Appellant contends that this omission is, in fact, a jurisdictional defect and places no authority of any court to hold a trial.

California Penal Code Section 849(a).

In line with appellant's challenge of subject-matter jurisdiction of the trial court before the appellate court, as aforedescribed, and that appellate court ignoring the challenge, thereby implying by its silence that the trial court did have subject matter jurisdiction (without the showing of any legal basis therefor), appellant challenged the constitutionality of California Penal Code Section 849(a) as it was applied, by omission, to him, in the Petition for Rehearing.

After quoting Section 849(a), appellant requested that court, or any other court reviewing this matter (which would include this

U.S. Supreme Court), to take judicial notice of Penal Code Section 849(a), and particularly the fact that it states that "a complaint stating the charge against the arrested person shall be laid before such magistrate." (emphasis added) It does not state that a complaint shall be filed with any court.

Appellant also pointed out in his Petition for Rehearing that, aside from this mandatory statute in California, appellant's right to be brought before a magistrate for a judicial determination of probable cause for his warrantless felony arrest derives from the Fourth Amendment to the United States Constitution, and then quoted the Fourth Amendment. Appellant then cited the U.S. Supreme Court's interpretation of Fourth Amendment safeguards as they pertain to arrest and detention from Gerstein v. Pugh 420 U.S. 103, 111-112, and from Johnson v.

United States, 333 U S. 10, 13-14.

Appellant stated that in Los Angeles, individuals subject to its "zealous officers ...engaged in the often competitive enterprise of ferreting out crime" are especially in need of the Fourth Amendment's protection "from rash and unreasonable interferences with privacy and from unfounded charges of crime." Appellant then cited a portion from Brinegar v. United States, 338 U.S. 160, 176 and stated that exactly what the Fourth Amendment was designed to protect was left unprotected in appellant's case. He was left "at the mercy of the officers' whim and caprice" and it appears that the California courts are simply allowing this to occur, even when challenged, as it was in this case.

Appellant pointed out the U.S. Supreme Court's recognition of the greater vulnerability to "rash and unreasonable interferences with privacy and unfounded charges of

crime" in the case of a warrantless arrest, as occurred in appellant's case. He then emphasized the statement made in Gerstein at page 114 "Once the suspect is in custody, however, [after a warrantless arrest], the reasons that justify dispensing with the magistrate's neutral judgment evaporate." Therefore, there is no justification for dispensing with the mandates of Section 849(a), as was done here.

Accordingly, due to the fact that the appellate court failed to address the mandatory duties prescribed by Penal Code Section 849(a) in light of the court's knowledge of appellant's warrantless felony arrest and the lack of any magistral determination of probable cause therefor following such arrest, thereby implying that the court is of the opinion that Section 849(a) is optional and may be dispensed with at whim, appellant challenged the constitutionality of Section

849(a) as it was applied to him, by omission, depriving appellant of his rights under the Fourth Amendment.

The court's response to that challenge was to completely ignore it by denying the petition altogether.

* * *

If this Court determines that the trial court did not have subject matter jurisdiction over appellant's criminal trial, as appellant contends herein, then the following questions are rendered moot and need not be addressed.

California Penal Code Section 991(a).

Appellant has challenged the Constitutionality of this statute since pretrial in the Municipal Court and preserved the issue at all stages. The first document filed by appellant, under special appearance, was a "Notice and Demand for Probable Cause Hear-

ing" together with his supporting declaration telling his side of the story which is a necessary consideration when determining probable cause for arrest.

Appellant was not then aware of the fact that there are two aspects of a probable cause determination: one for the arrest and another for pretrial detention. At the time of filing the demand for a probable cause hearing (May 23, 1986), appellant was primarily interested in having a judicial determination of probable cause for his warrantless felony arrest as he should have had by law. Although appellant cited Section 991(a) as authority for making the motion, the facts stated were not directed to pretrial detention, but were addressed to the first aspect of probable cause -- i.e., arrest and accompanying complaint.[13]

13. COMES NOW the accused, Ronald L. Branson, appearing specially and not generally herein, being without counsel of choice, to notice the court that a demand is hereby entered for a probable cause determination

However, rather than look to the substance of the probable cause aspect being demanded, i.e., probable cause for the complaint (which must at the same time consider the arrest itself), which is mandatory under Fourth Amendment standards, a necessary accommodation between an individual's right to liberty and the State's right to control crime (In Re Walters, 15 Cal.3d at 745), the

on the facts in evidence pursuant to the provisions of Penal Code Section 991.

Accused contends that the charge, as shown in Count I of the complaint, an alleged violation of Vehicle Code Section 10852, is openly contradicted by the observations of the arresting officers as written in the arrest report. Probable cause must fail when a charge is alleged which has no basis or foundation in the supporting facts and testimony attached to the complaint.

Accused contends that the charge, as shown in Count II of the complaint, an alleged violation of Penal Code Section 664/459, is also fatally infirm as the testimony of the witness is circumstantial and not supported by the observations of the arresting officers as written in the arrest report.

"...with the intent to commit grand and petit larceny and any felony therein." This portion of Count II necessitates that the prosecution show, beyond reasonable doubt, that the state of mind of the accused, at the scene, was one in which it is reasonable to conclude that the violation alleged would have occurred if the accused had not been prevented by the efforts of the witness, an off-duty

court, at the tutelage of the prosecutor, ruled that the motion was untimely and is appropriate only while a defendant is in custody awaiting trial.[14] As a result of this

CHP officer. The facts in evidence simply do not merit this conclusion, therefore, the sufficiency of probable cause in the instant case is in grave question.

Accused submits that it has never been his intent to commit a crime, that there is no record of prior history of criminal acts by the accused to offer any support to the infirm allegations. See Declaration of Accused, attached hereto and made a part hereof by reference thereto. Therefore, this matter may be disposed of to the satisfaction of the court at a Probable Cause Hearing, thereby relieving all potential parties from the burden of a more lengthy proceeding. [Dem. for Probable Cause Hrg. 5/23/86]

14. THE DEFENDANT: This is a motion for the Court on a probable cause hearing, pursuant to Penal Code Section 991. ...
THE COURT: Do you wish to be heard?
THE DEFENDANT: Yes, I do.
THE COURT: Please proceed.
THE DEFENDANT: I maintain that the complaint as set forth and the facts of which it is rested upon really states no cause of action in which this court should proceed upon because the evidence as stated by the police report is in conflict with the complaint itself.
I'd like to also state that I, just this morning, was handed a complete copy of the complaint... and police report...before it had been deleted exparts of it, and I believe that if this court looks at the evidence, there would be absolutely no reason to proceed thereon and I would object to any declarations being filed at this time from the other side being late in that I cannot cross-examine it as I

ruling, the court has given its blessing to the failure of the police to bring appellant before a magistrate under Fourth Amendment and statutory mandates for a probable cause determination on the sufficiency of the complaint and then releasing appellant from custody after an extended imprisonment of six days without any such hearing, thereby forever barring the door to such probable cause determination. Apparently the releasing of appellant from custody evaporated that Fourth Amendment protection and it was no longer necessary to comply with it.

could a witness.
THE COURT: Mr. Carrasco? [the prosecutor]
MR. CARRASCO: Thank you, Your Honor. Our position... is simply that this motion is at this time untimely. Penal Code Section 991 provides for determination of whether there is probable cause to believe a defendant committed an offense at the time of arraignment when the defendant is in custody. We are way past the arraignment date and this defendant has already been in Division 105. Defendant was arraigned on May 16 and was set for trial on June 6 in 103. We feel it is untimely.
THE DEFENDANT: May I respond to that?
THE COURT: Yes.

Such an attitude by the courts cannot be condoned in this country if the Fourth Amendment is to have any meaning at all.

Upon the denial of this right by the court, appellant filed a declaration (1) objecting to the violation of his Constitutional rights, and (2) challenging the Con-

THE DEFENDANT: I am familiar with the argument raised by the prosecution and I would assert both Gerstein v. Pugh...420 U.S. 103 and its progeny, ...In Re Walters 15 C.3d 738. ¶The State Supreme Court clearly says that, as the prosecution mentions, it should be appropriate at the time of arraignment if he does not waive the probable cause determination. ¶I did not waive the probable cause determination nor was I ever proposed with such notice, and it says here, "However, it is incumbent upon the defendant to move the court to make or to continue the determination. His failure to do so at the time of arraignment, with notice of his right thereto, will be deemed to constitute a waiver of that right." ¶I was never... [given notice] of such a right and I never waived such a right, so such assertion by the prosecution has no standing and that is page 750.
THE COURT: Well, first of all, the case that you cited is a 1975 case; the statute under which you are proceeding is a 1980 statute. I don't know whether it was in effect.
THE DEFENDANT: I believe the United States Supreme Court has set forth that this is a constitutional right that would violate my 4th Amendment and also my 6th Amendment and, therefore, since I do not waive it, it cannot be presumed, since it is a basic

stitutionality of Penal Code Section 991(a), on June 9, 1986, by special appearance. At the next court appearance, on June 11th, appellant requested the court to take judicial notice of all papers filed to date, including the above-mentioned declaration. At the end of that court proceeding, appellant stated that he was challenging the Constitutionality of Penal Code Section 991(a) and preserving that issue for appeal. The court, however, did not act any further on that matter.

constitutional right, cannot be presumed that I waived such right and actually would supersede any state statute if indeed it was contingent that it could take away that right.
THE COURT: My judgment in this matter is that this motion is no longer timely. In my view, it is appropriate while the defendant is in custody awaiting trial. ¶Mr. Branson was released on his own recognizance. File is actually unclear whether he is on his own recognizance or bail is up. In any event, he is clearly not in custody and therefore the court denies this motion.
THE DEFENDANT: For the record, I would like the record to show that I do object to that.... [Rptrs Trans 6/6/86 pp 3-5]

The issue was argued in appellant's Opening Brief, primarily on the basis that Section 991(a) fails to provide for notice to the defendant of an opportunity for a probable cause hearing while still in custody. While Section 991(a) talks about a "magistrate" at the arraignment, it does not talk about a "commissioner" who, by definition of law, is not qualified to conduct a probable cause hearing. Furthermore, the right to this probable cause hearing is already mandated by the Fourth Amendment as well as by the California Constitution and mandatory California statute (Penal Code Section 849(a); Section 825). Therefore, such right cannot be made to depend on appellant requesting such a right while still in custody, or at all. Requesting the right does not create it; and failure to request it does not destroy it.

The appellate court failed to address

the Constitutionality of Section 991(a) which was duly presented by appellant. Instead, the court merely responded in terms of "reversible error" by stating that no reversible error appears in that "defendant was released from custody after his arraignment and any failure to properly follow those procedures...did not preclude defendant from being tried." (Memorandum Judgment page 2). By failing to address the Constitutionality of Section 991(a), both on its face and as applied to appellant, the lower court upholds its Constitutionality by implication and the challenge is now here.

California Vehicle Code Section 10852.

The Constitutionality of this statute was first raised in appellant's Opening Brief on appeal. The thrust of this challenge is that the trial court, once again upon the tutelage of the prosecution, applied a very broad definition of the word

"tamper" taken from a 1975 case involving an actual theft of an automobile.[15]

15. THE COURT: ...Count I charges on or about May 11, 1986, at and in the City of Los Angeles and the County of Los Angeles, State of California, a misdemeanor, to wit, a violation of Section 10852 of the Vehicle Code. ...
...
THE COURT: And the charge is -- the allegation is that you "willfully and unlawfully injured and/or tampered with a vehicle or the contents thereof and did break or remove a part of the vehicle without the consent of the owner." ¶Now, do you understand what it is that the City Attorney is alleging that you did? or claims that you did in that count?
MR. BRANSON: I understand what the words are stating.
THE COURT: Let me make it more clear, then, perhaps. ¶Let me inquire of the City Attorney. Is the City Attorney alleging that the defendant unlawfully injured or tampered with a vehicle or the contents thereof, or both?
MS. REEL: Tampered with a vehicle as "tampered" is defined in People v. Anderson. We are not alleging that he broke anything.
THE COURT: All right. So you want to eliminate the word "injured"? Is that going to confuse the jury?
...
THE COURT: All right. These counts are normally alleged in the language of the statute. But sometimes to have all that excess verbiage in there is confusing to the jury. And so, if there are parts of this that are not applicable here, let's strike them out at this time so that no one is confused by them.
...
THE COURT: So it will now read "Did willfully and unlawfully tamper with a vehicle or the contents thereof without the consent of the owner."
MS. REEL: Yes. Thank you. [Rptrs Tr. 6/17/86 pp 20-22]

That case, People v. Anderson, 15 Cal.3d 806, defined "tampering" merely as "any act inconsistent with the ownership thereof" which does not provide uniformity of decision across the nation nor does it give full faith and credit to those other definitions.[16] By applying the Anderson definition generally to all cases of "tampering" is to single out California and allow "tampering" to actually become, in substance and effect,

16. If the crime of "tampering"...is defined merely as "any act inconsistent with the ownership thereof" (RT 6/25/86 615/25-26) without more, then appellant must question the Constitutionality of V.C. §10852 as applied to him in this case. ¶"Full faith and credit shall be given in each State to the...judicial proceedings of every other State." U.S. Constitution, Article IV, Section 1. ¶"The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." Id. Section 2.

"Tampering has been defined as the making of unauthorized alterations or changes. (citations). ... Tampering statutes may be phrased in such a way as to link the offense of tampering so closely with that of injuring, destroying, or defacing the vehicle that in a prosecution thereunder, there cannot be a conviction in the absence of any evidence of injury to the vehicle." (numerous citations) State

a mere "trespass".[17] According to a reading of Section 10852, the Legislature had no such intention, as appellant explained.[18]

v. Arnett, 168 NW.2d 807 (1969). ...¶"It is evident this law was designed to establish criminal liability in cases of stealing hub-caps, tires, carburetors, spark plugs, etc., or any other tampering with automobiles. ¶The State argues that 'tampering' should be construed to include a trespass upon a vehicle. No other extension of the law into other areas was contemplated nor was it intended...." Brown v. State, 546 P.2d 1023, 1026 (Okla.)
[Opening Brief pp 10-11]

17. The definition and instruction of "tampering" applied to appellant in [the instant]case does exactly that-- it construes "tampering" as a trespass upon a vehicle. ¶¶ Penal Code Section 20 states "In every crime or public offense, there must exist a union or joint operation of act and intent, or criminal negligence." If the word "intent" in the California statute does not mean "criminal intent", then it is inconsistent with McLarty and Starks, supra. [414 SW.2d 315 and 459 SW.2d 249] If the accepted definition of "tamper" in V.C. §10852 is merely "any act inconsistent with ownership" to support conviction thereof, it is void for vagueness and converts "tampering" into a mere trespass, inconsistent with the proscription...in Brown v. State supra, 546 P.2d at 1026. [Id. pp 11-12]

18. "No person shall either individually or in association with one or more other persons, willfully injure or tamper with any vehicle or the contents thereof or break or remove any part of a vehicle without the consent of the owner." Vehicle Code §10852. ¶The statute is to be read and interpreted in its entirety, all words bearing on each other. ¶"The basic rule of statutory construction is that the

Lastly in appellant's Opening Brief on that issue, appellant explained that the Anderson case did not parallel appellant's case factually, and therefore any interpretations given in that case should not apply to the facts of appellant's case.[19]

intention of the Legislature must be ascertained and given effect. (citations) In ascertaining that intention, a statute must be read and considered as a whole. ... (citations)"Marrujo v. Hunt (1977) 71 Cal.App.3d 973, 977; 138 Cal.Rptr 220. ¶"In determining the legislative intent, we must look at the entire section and give effect to all its parts." Mazza v. Austin (1938) 26 Cal.App.2d at 87-88.

As it is written, V.C. §10852 clearly shows that in order to "tamper" one must injure a vehicle, or break or remove any of its parts without the owner's consent. The words "injure", "break", and "remove" must be taken into consideration when interpreting the word "tamper". [Opening Bf p.10]

19. The case of People v. Anderson (1975) 15 Cal.3d 806, 126 Cal.Rptr 235, 543 P.2d 603, upon which the People wholly relies in convicting appellant by this overbroad interpretation of "tamper", states that an accepted definition of "tamper" is "to interfere with" in the sense that it deprives the owner of his right to immediate and continuous possession. In the instant case, the People have failed to show such a deprivation. The Anderson interpretation of "tampering" clearly is in the context of an auto theft and does not parallel the facts of appellant's case.... As the facts of Anderson are inapposite to appellant's case at bar, the People cannot rely on

The respondent stated that appellant's only support for a definition of "tampering" more narrow than that applied is decisional law from other states. While that was one consideration discussed, respondent ignored appellant's argument that a proper reading of Anderson, as well as consideration of criminal intent according to Penal Code Section 20 necessitates a stricter interpretation. Respondent totally ignores the issue of intent.

To replace the statute with the Anderson definition of "tampering" is to give the court power to re-legislate existing law. Since the court's duty is merely to interpret law, it must be done by applying specific facts of a case. As stated before, the facts of Anderson are not the facts of appellant's case.

Anderson to convict appellant and therefore the conviction should be reversed; and V.C. §10852 is unconstitutional as applied to appellant with the overbroad, vague, and simplistic interpretation it was given in the instant case, inconsistent with other State jurisdictions. [Opening Brf pp 12-13]

Respondent contended "since the California Supreme Court has already explicitly defined tampering, the decisions of other state courts on this question have no legal force or effect in California." Accordingly, an act performed in one state could be perfectly legal, while the identical act performed in another state could be deemed to be criminal. It is such legal insanity and inconsistency that Article IV, Section 1 is designed to prevent.

However, consistent with its "rubber-stamping" policy of government action, the appellate department, ignoring all of appellant's argument to the contrary, stated "We follow Anderson and decline to look outside the jurisdiction of California to determine the correctness of the definition of "tampering" as used by the trial court in the instant case." (Memorandum Judgment p.3) By so stating, the appellate court "declined"

to give appellant due process of law with such an arbitrary and unsupported conclusion. Consequently, the court refused to consider the constitutionality of Section 10852 in light of the disparate construction of the term "tampering" between states, and its unsupported statement "The trial court's definition was not unconstitutional as asserted by defendant" is meaningless absent such consideration. Since constitutionality is arbitrarily upheld by the appellate court, the question is brought to this Court.

California Penal Code Section 1009.

Although the misapplication of this statute was discussed throughout the lower appeal, the question of its Constitutionality was first brought in the Petition for Rehearing.[20]

20. With this Court's allowance of the amendment under Penal Code Section 1009, despite the fact that appellant was thereby denied a reasonable opportunity to prepare for trial on the amended counts, appellant challenges the constitutionality of Penal Code Section 1009 as applied to him in this case. [Pet. for Reh. 12/3/87 p.22]

Penal Code Section 1009 grants the prosecution the right to amend a complaint with certain exceptions. One such exception is that amendment should not be permitted if "the substantial rights of the defendant would be prejudiced thereby." Existing at the time the amendment by the prosecution was allowed were two Constitutionally secured rights of appellant,[21] and not mere statutory rights. While the trial court recognized appellant's right to speedy trial as one they could not violate under the law, the court stated that appellant's right to "five days to prepare for trial" was a statutory right only and

21. In the instant case, the filing by respondent of an amended complaint on the final day of the speedy trial limit did compel defendant (appellant) to either waive his right to prepare an adequate defense or waive his right to a speedy trial. Therefore, the trial court abused its discretion [providing it had jurisdictional discretion in the first place, which is now challenged] in allowing the amended complaint to be filed because "the substantial rights of the defendant [were] prejudiced thereby." The rights to DUE PROCESS and a SPEEDY TRIAL are both Constitutionally secured and protected rights, and as such, they are superior to any rights created statutorily.... [Appellant's Reply Brf 7/6/87 p.4]

must be requested by way of a continuance, at which time the speedy trial right would be waived.[22] Appellant discusses in the following sub-heading (P.C. §1049) that what has been made a "statutory right" in California specifying "five days to prepare" stems from a principle of due process of law requiring "adequate opportunity for preparation of a defense" which violation is "of

22. THE DEFENDANT: Your Honor, I'd like to counter your statement.... You said that it's not a fundamental right in preparation for trial. And I'd like to know--
THE COURT: The five days is the statutory right.
THE DEFENDANT: I'd like to cite People v. Hombrey[sic] and that's California appellate case 143 Cal.App.2d 733. ¶It says that counsel for a defendant has a right to reasonable opportunity to prepare for trial and is as fundamental as his right to counsel. You stated you disagreed with that, is that correct?
THE COURT: The five days is not in the Constitution. The Constitution doesn't say you have five days to prepare for trial. That's the statute.
THE DEFENDANT: Do you disagree with the appellate court decision that says that you have reasonable opportunity to prepare for trial is as fundamental as the right to counsel?
THE COURT: I agree with that. You have a right to prepare for trial, but you have to request it. If you request it, then you're requesting that the trial not go forward today. [footnote continues]

constitutional dimensions". [23] The trial court (as well as the appellate court) has refused to recognize the fact that it was due to the prosecution's amending on the last day of the speedy trial limit that placed the imposition upon appellant to either (1) request a continuance in order to gain a reasonable opportunity to prepare his defense (which is a Constitutional right under due process of law), and thereby give up his right to speedy trial, or (2) go to trial that day (the last day under the speedy trial limitation), and thereby give up his right to a reasonable opportunity to prepare a defense. The first option, above, was not a cure to the problem of being forced to give

THE DEFENDANT: You're over-looking another thing that the appellate court said. It said it is to be remembered that it was the deputy district attorney, who by reason of his unpreparedness -- ...
THE COURT: This is off on a -- different topic. ...
[Rptrs Trans 6/16/86 pp 46-47]

23. See People v. Maddox (1967) 67 Cal.2d 647, 652-3 (discussed and cited in next sub-heading, infra.)

up a Constitutionally protected right. Even though this dilemma was created at the instance and fault of the prosecution (not in merely amending, but amending ON THE SAME DAY TRIAL WAS TO BEGIN, thus creating the conflict for appellant), the trial court, in conscious disregard of appellant's rights, denied appellant's motion and allowed the last-hour (literally) amendment to stand.[24]

24. MR. BRANSON: ... I would like to argue for the record that there is bad faith involved here. I have objected. There are motions pending before the court, including a motion to dismiss for the basic reasons. ¶And I believe the very fact that we are going to entertain and hear these motions this morning, after a jury has been called and sworn in last night, was only an illustration, a demonstration, of a jury selection that was made for the mere device to avoid the impact of a statute which would be absolute, 30-day in this case. ¶That statute would have run yesterday. And the only reason that jury was brought in here before the motions were heard was to avoid the impact of a 30-day statute.
MS. REEL: [prosecution] Your Honor, may I be heard briefly?
THE COURT: Yes, briefly.
MS. REEL: Yes. It's my understanding that the defense motions toll time. Certainly the swearing in of the panel tolled the time in this case. And I would additionally not bring this case up, because it also refers to another issue, the Faretta. ¶I would refer the court to People v. Floyd, 1 Cal.3d 694 in which

it states that "the defendant may not juggle his constitutional rights in an attempt to evade prosecution." And I would submit that that's exactly what is going on here. ¶And the People would submit, Your Honor.
MR. BRANSON: I contend, Your Honor, that there was no need to arraign me on new charges,had not the City Attorney been untimely in bringing all these new charges and dumping on them. ¶And I had a case right on point, People v. Hembree [cited as Hombrey; see Fn.22] that said that the deputy district attorney was at fault in his case because they brought in two new charges, dropped one charge and brought in two new charges at the last moment. And it was their fault that that came about, and not the fault of the defendant. ¶It's not my fault that the last day she wants to have me rearraigned. And, therefore, it shows, just my argument, that this is not, this proceeding is not done in good faith and that there is no good faith in the bringing in of the jury at this time and swearing it in, other than the mere fact of trying--
THE COURT: Mr. Branson, please don't yell.
MR. BRANSON: --to avoid the impact of the statute.
THE COURT: ... ¶You indicated, you said during your argument, that you were not ready to proceed yesterday and you are not ready to proceed today. Let me just say that does disturb me. ¶Let me clarify that. Are you seeking a continuance? Because if you are, the court is prepared to give you one. I just want to make sure we have that clear.
MR. BRANSON: Your Honor, from my studies and from purely protecting my rights, if I were to ask for a continuance I would waive the 30-day statute.
THE COURT: That's right.
MR. BRANSON: And I am not waiving that right.
THE COURT: Then you are not asking for a continuance?
MR. BRANSON: I am not asking for a continuance.
THE COURT: All right. The motion is denied.
[Rptrs Trans 6/17/86 pp 5-7]

Respondent (representing the prosecution) in their responding brief merely argued the right to amend under Section 1009 without any mention of the "last hour" timing which is what created the problem. They also reiterated the "juggling rights" theory initially introduced by Ms. Reel (see Fn.24), referring to a Floyd case.[25] Once again, the prosecution relies on a case whose facts do not parallel appellant's case and is not applicable. They also refer

25. Respondent waxes eloquently on decisions of other courts which state that it is not justice to allow a defendant to so manipulate his rights as to avoid prosecution. ... the cases cited on this issue do not relate to the instant case. The Floyd case deals with a defendant's conflict with his attorney, stating: ¶"He may not demand a speedy trial and demand adequate representation, and, by the simple expedient of refusing to cooperate with his attorney, force a trial court to choose between the two demands, in the hope that a reviewing court will find that the trial court has made the wrong choice." People v. Floyd (1970) 1 Cal.3d 694, 707. ¶In the instant case, it was the trial court which forced appellant to "waive" (or, more accurately, forfeit) his right to prepare a defense to the new charges filed by respondent on the last day. Appellant had

to a Powell case, equally as inapposite.[26] Referring to any "choice" appellant may have had regarding the consequences of the last-hour amending by the prosecution, as stated before (ante.) was to choose which of two Constitutionally-protected rights-- not merely statutory-- he wished to waive. Since appellant did not wish to waive any of his rights, the trial court forced him to forfeit one of them[27] while allowing the prosecution's last-hour amendment to stand. The "choice" of requesting a continuance would have waived the speedy trial right.

no "choice",... [Reply Brief 7/6/87 pp 5-6]

26. Likewise, the Powell case cited by respondent is inapposite to the instant case. That court stated "We do not find that the delay is attributable to the conduct of the People." (40 Cal.App.3d at 152). Need more be said?? [Id. p.6]

27. Appellant had no "choice", nor could he be Constitutionally required to make a "choice" between two substantive rights. Appellant "chose" to demand all of his rights at all times and waive none of his rights at any time; yet the trial court in the instant case arbitrarily decided that it would make the "choice" for appellant, thereby violating appellant's Constitutionally secured and protected right

Despite appellant's arguments and the facts of this case, the appellant department arbitrarily stated, in light of facts to the contrary, "In compliance with Penal Code Section 1009 the amendment did not prejudice the substantial rights of the defendant"; therefore, appellant challenged the Constitutionality of Section 1009 as it was applied to him.[28] The challenge being ignored by the denial of the petition, it is now brought to this Court.

to DUE PROCESS to have time to prepare a defense to the new charges filed against him. [Id. p.6; see also near ending of Fn.24]

28. Since this Court stated in its Memorandum Judgment, page 2, that "In compliance with Penal Code section 1009 the amendment did not prejudice the substantial rights of the defendant", while refusing to address appellant's argument regarding the deprivation of his right to a reasonable time to prepare for trial on new charges, appellant must challenge the constitutionality of Penal Code Section 1009 as applied to him. [Pet. for Reh. 12/3/87 p.21]

California Penal Code Section 1049.

Directly related to appellant's challenge of Section 1009, ante., is his challenge of Penal Code Section 1049 which, likewise, was brought up in the Petition for Rehearing, although the statute itself was argued throughout the lower appeal.[29]

Section 1049 grants a defendant "at least five days to prepare for trial." (see Appendix D). While the statute grants "at least five days", adequate opportunity to prepare a defense is a Constitutional right under due process of law, as was stated by the California Supreme Court.[30] That same

29. In direct relation to appellant's challenge of the constitutionality of Penal Code Section 1009 as applied to him due to the deprivation of appellant's due process right of an opportunity to adequately prepare a defense when amendment was permitted in this case, appellant must also challenge the constitutionality of Penal Code Section 1049 as applied, by omission, to him. [Pet. for Reh. p.23]

30."[J]ust as a defendant may not be brought to trial too late (citations), he may also not be brought to trial too soon, i.e., without adequate opportunity for preparation of his defense (cita-

Court also stated "That counsel for a defendant has a reasonable opportunity to prepare for trial is as fundamental as is the right to counsel. (citations)" People v. Maddox, 67 Cal.2d at 652. When appellant brought this to the trial court's attention, the judge stated "You're wrong" and furthermore refused to recognize appellant's right to a reasonable opportunity to prepare a defense as a Constitutional right under due process.[31]

tions).... A violation of [Pen.Code §1049] is not just a procedural deficiency, but an error of constitutional dimensions...result[ing] in a denial of due process of law. (citations)" People v. Maddox (1967) 67 Cal.2d 647, 652-3; 63 Cal.Rpr 371; 433 P.2d 163. [cited in Appellant's Opening Brief pp 5-6]

31. THE COURT: ... ¶I am going to allow the filing of the amended complaint at this time. ¶Now, Mr. Branson--
THE DEFENDANT: I have to object for the record.
THE COURT: All right.¶Because the People have amended the complaint, you do have a right to a continuance at this point in time if you wish, or you may go forward at this time if you wish to do so.
THE DEFENDANT: Your Honor, I believe that the court has put itself into an untenable position, and if I might explain what that is, I have never yet been arraigned on charges.
THE COURT: I'm about to do that.
THE DEFENDANT: I have not yet entered any plea.
THE COURT: Right. [Footnote continues]

Appellant brought this matter up in his Open-

THE DEFENDANT: Okay. If that's the route the court takes-- desires to go, I believe that the prosecution has ignored a statute that forbids them from proceeding any further on this thing. You look at Penal Code Section 1049, says preparation for trial.
THE COURT: Yes, that's correct.
THE DEFENDANT: Time allowed defendant. After his plea, the defendant is entitled to at least five days to prepare for trial.
THE COURT: Yes, that's correct.
THE DEFENDANT: That is a basic fundamental constitutional right, and it's as sound as the right to counsel.
THE COURT: You're wrong about that.
THE DEFENDANT: I have statutory [sic] authority for that.
THE COURT: You said that's a constitutional right. That's not a constitutional right, that's a statutory right. There are two statutory rights.
THE DEFENDANT: I have a statutorily protected right and a constitutional right and the thing is, they cannot be deprived from me. If the court is going to entertain a plea, then it must give time to prepare for trial. And I'm not waiving time.
THE COURT: And I will--
THE DEFENDANT: I'm not waiving time, and I don't waive my rights under 1049 of the Penal Code statute. Therefore, the court is in a deadlock position.
THE COURT: No, the court is not in a deadlock position. There are two statutes here, and I think that the statute that gives you a right to go to trial today is the one that takes precedence. ¶If you want five days to prepare for trial, I will give it to you, if you request it. But if you request it, then you waive your right to go to trial today.
THE DEFENDANT: I do not waive my time for the statutory limitation of thirty days.
THE COURT: All right.
[Rptrs Trans 6/16/86 pp 40-42]

ing Brief. Respondent came back with the "juggling of rights" theory (Floyd and Powell cases discussed in preceding heading) and appellant's supposed "choice" of requesting a continuance which would have purportedly solved his dilemma (which it does not, also discussed in the preceding heading).

Because the appellate department likewise, in rubber-stamping the trial court, refused to recognize and address the Constitutional dimensions of appellant's right to a reasonable time to prepare a defense (which was one purpose of bringing the issue up on appeal in the first place), appellate review served no purpose. This Constitutional challenge was also ignored by a simple denial of the Petition for Rehearing.

* * *

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

Appellant contends that the questions presented in this appeal are so substantial as to require plenary consideration, with briefs on the merits and oral argument, for their resolution.

The questions presented herein fall into two different categories: Questions 1 and 2 relate to subject matter jurisdiction, going to the validity of the entire criminal trial itself, and involve appellant's substantive due process as described by this Court in Daniels v. Williams, i.e., the first two kinds of Due Process protection under the Fourteenth Amendment.[32] Questions 3 through 6 relate to procedural fairness at the pretrial and trial stages and they involve appellant's procedural due process as described in

32. "[The Due Process Clause of the Fourteenth Amendment] is the source of three different kinds of constitutional protection. First, it incorporates specific protections defined in the Bill of Rights. Thus,

Daniels, i.e., the third kind of protection.[33]

What makes these questions substantial for purposes of this appeal is not only the fundamental nature of the subject-matter jurisdictional challenge, but the fact that appellant has received no effective redress from the appellate court and no further redress was permitted appellant in California, his application for certification and transfer to the California Court of Appeal being summarily denied by the appellate department of the Superior Court. Thus, only one court was available for appellate review of these substantial questions, and as the record re-

the State, as well as the Federal Government, must comply with the commands in the First and Eighth Amendments; so too, the State must respect the guarantees in the Fourth, Fifth, and Sixth Amendments. Second, it contains a substantive component, sometimes referred to as 'substantive due process', which bars certain arbitrary government actions 'regardless of the fairness of the procedures used to implement them'." Daniels v. Williams (1986) 106 S.Ct 677, J. Stevens concurring in the judgments.

33. "Third, it is a guarantee of fair procedure, sometime referred to as 'procedural due process': the State may not execute, imprison, or fine a defendant without giving him a fair trial,...." Id., at page 678.

flects, the appellate department (the only court reviewing this case in California) served only to "rubber-stamp" the respondent's position, just reiterating what they presented while ignoring appellant's evidence to the contrary. Not only did the appellate department ignore the applicable law cited by appellant and merely repeated inapplicable law cited by respondent, but the court did not address the facts of appellant's case either.

The pattern in appellant's entire case has been (as seen by a reading of the transcripts) the trial court in effect acting as an agent for the prosecution, and the appellate court simply following suit. Any evidence that would tend to exonerate appellant was excluded as "irrelevant", the scope of testimony was severely limited by the prosecution and the court, the majority of appellant's questions and presentation was objected to and sustained, preventing appellant

from even putting on an adequate defense. And of course, the prosecution was allowed to amend the complaint at the last hour before trial began and appellant was denied any time -- let alone a reasonable time -- to prepare his defense on the new charges. Consequently, the jury was not allowed to become informed of the intended usage of law and all the facts supporting a proper defense, but, rather, was presented with a distorted version of both the law and the facts of this case. It was only by this manipulation of the trial that a conviction was rendered.

Appellant is not merely complaining as a "disgruntled litigant" because of the conviction, but he is expressing the unfairness of the procedures used in obtaining that conviction. Furthermore, and even more fundamental for purposes of appeal to this High Court, is the fact that appellant has not received redress of his Constitutional chal-

lenges or even of his subject-matter jurisdictional challenge which goes to the actual validity of the entire criminal proceeding. Therefore, appellant is claiming that the State procedures, both trial and appellate, that have been provided in California, have been fundamentally unfair.[34]

Appellant is still seeking redress for (1) his challenge of subject-matter jurisdiction of the trial court which involves local law enforcement's violation of the Fourth Amendment as well as California

34."...the deprivation [of liberty or property] may be entirely legitimate...but the State may nevertheless violate the Constitution by failing to provide appropriate procedural safeguards. The constitutional duty to provide fair procedures gives the citizen the opportunity to try to prevent the deprivation from happening,.... Similarly, a deprivation may be the consequences of a mistake or a negligent act, and the State may violate the Constitution by failing to provide an appropriate procedural response. ... ¶...[E]ven though a deprivation may be unauthorized, a procedural due process claim may be raised if it challenges the State's procedures for preventing or redressing the deprivation." Daniels v. Williams, supra, 106 S.Ct. 677 at 679.

statute (Penal Code Section 849(a)), both of which are mandatory obligations on the part of law enforcement that were to have been carried out; and (2) if subject-matter jurisdiction of the trial court is found to exist, his challenge of the Constitutionality of several State statutes, the violations of which led to his conviction and the marring of his previously unblemished criminal record.

CONCLUSION

Since there has been no adequate or effective remedy in California for the redress of appellant's grievances, appellant respectfully requests that his questions be given plenary consideration, with briefs on the merits and oral argument.

Dated: March 16, 1988

Ronald L. Branson

RONALD L. BRANSON
Appellant in Pro Per

AFFIDAVIT OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

RONALD L. BRANSON, being first duly sworn, deposes and says:

That on March 15, 1988, he served three copies of the within JURISDICTIONAL STATEMENT on all parties and the State Attorney General by placing true copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

(Three copies each to the following):

LOS ANGELES CITY ATTORNEY
Appellate Division
1600 City Hall East
200 North Main Street
Los Angeles CA 90012

CALIFORNIA STATE ATTORNEY GENERAL*
3580 Wilshire Blvd., Suite 800
Los Angeles CA 90010

* 28 U.S.C. §2403(b) may be applicable

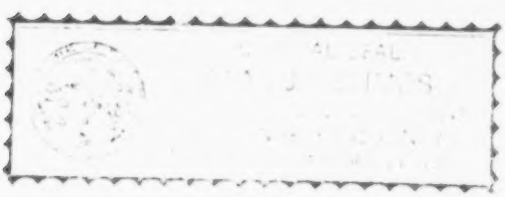
Dated: March 15, 1988

Ronald L. Branson
RONALD L. BRANSON

Subscribed and sworn to
before me this 15 day
of March, 1988.

Notary Public in and for
said County and State

My Commission expires 12-27-91.



APPENDIX

FILED

NOV 18, 1987

APPELLATE DEPARTMENT OF THE SUPERIOR COURT

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA,	Superior Ct. No. CR A24904
Plaintiff and Respondent,	Municipal Court of the Los Angeles Judicial District No. P 604275
vs.	
RONALD L. BRANSON,	
Defendant and Appellant.	MEMORANDUM JUDGMENT

This cause having been submitted for decision, and having been duly considered, judgment is ordered as follows:

The judgment is affirmed.

The record on appeal reflects the misdemeanor complaint was filed on May 14, 1986. The docket states defendant was in custody, but could not be located. On May 15, 1986 defendant was still in custody and removal was issued. On May 16 defendant was ar-

raigned and the public defender was appointed to represent him. On this date defendant was released and bail was set. In defendant's Opening Brief he states prior to May 16 he was under warrantless felony arrest for six days. He argues the trial court erred on May 16 when

PAGE 2:

it did not inform defendant of his right to a probable cause hearing prior to entering a plea under Penal Code section 991 subdivision (a). We do not find reversible error. The court in In re Walters (1975) 15 Cal.3d 738, 753 stated: "If the judicial officer finds that probable cause has not been established [at a pretrial probable cause hearing], the defendant must be discharged from custody. However, prosecution of the offense is not precluded thereafter since additional evidence may be obtained by the time of trial. In any event, an

unlawful arrest is not a bar to trial." In the instant case defendant was released from custody after his arraignment and any failure to properly follow those procedures required for a probable cause hearing did not preclude defendant from being tried. No reversible error appears from the record on appeal.

We also conclude that the trial court did not err in allowing the prosecution to amend the complaint. It is within the sound discretion of the trial court to allow an amendment to the complaint and the ruling will not be disturbed on appeal unless there is a showing of a clear abuse of that discretion. (People v. George (1980) 109 Cal.App.3d 814, 818-819.) In the instant case, there has not been a showing of a clear abuse of the trial court's discretion in allowing the amendment. In compliance with Penal Code section 1009 the amendment

did not prejudice the substantial rights of the defendant and the counts added were those which might have properly been joined in the original complaint. Nor do we agree with defendant's assertion that the unlawful driving charge was unproven since

PAGE 3:

the circumstantial evidence of defendant's driving was sufficient to suuport the charge.

The trial court's definition was not unconstitutional as asserted by defendant. The trial court stated the definition would be as follows: "The phrase tampers with as used in this instruction means to interfere with. Interfere includes conduct which is broader in scope than merely damaging a vehicle for it encompasses any act inconsistent with the ownership thereof." Defendant was charged with having violated Vehicle Code section 10852 which states: "No person shall either individually or in association with one or

more other persons, wilfully injure or tamper with any vehicle or the contents thereof or break or remove any part of a vehicle without the consent of the owner." In People v. Anderson (1975) 15 Cal.3d 806, 810, the court defined one meaning of tampering which is included in section 10852 to be as follows: "An accepted definition of 'tamper' is to 'interfere with'. (citation) Interference includes conduct which is broader in scope than merely damaging a vehicle, for it encompasses any act inconsistent with the ownership thereof." We conclude the trial court's instruction was consistent with the definition of "tampering" as used in the statute and as interpreted by Anderson. We follow Anderson and decline to look outside the jurisdiction of California to determine the correctness of the definition of "tampering" as used by the trial court in the instant case.

Finally, we conclude that the trial court did not err in ruling that defendant was not entitled to the assistance of

a person who was not an attorney. (See Howard v. Superior Court (1975) 52 Cal.App. 3d 722, 726.)

REESE
Acting Presiding Judge

We concur.

SOVEN
Judge

NEWMAN
Judge

F I L E D
DEC 18 1987

APPELLATE DEPARTMENT OF THE SUPERIOR COURT

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, vs. RONALD L. BRANSON, Defendant and Appellant.	) Superior Ct. No. CR A24904)) Municipal Court of the Los Angeles Judicial Dist. No. P 604275)) ORDER DENYING REHEARING AND DENYING CERTIFICATION

THE COURT*

The petition of appellant for a rehearing after judgment of this court on appeal or, in the alternative, certification of cause to the Court of Appeal in the above-entitled, case having been filed and having been duly considered,

Said petition is hereby denied.

REESE NEWMAN

*Before Reese, Acting P.J., and Newman, J.

RONALD L. BRANSON
8643 Kester Avenue
Panorama City CA 91402
No phone

Appellant, Sui Juris
In Propria Persona

COPY REC'D L.A.M.C.
Van Nuys Branch
A.M. Mead 4:35 p.m.
EDWARD M. KRITZMAN
MAR 11 1988

ORIGINAL FILED
JAN 11 1988
COUNTY CLERK

APPELLATE DEPARTMENT OF THE SUPERIOR COURT

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff/Respondent	LASC No. CR A24904 LAMC No. P 604275 NOTICE OF APPEAL
v.	[28 USC §2101(d)] [USSC Rules 10, 11]
RONALD L. BRANSON, Defendant/Appellant	

PLEASE TAKE NOTICE that defendant/appellant RONALD L. BRANSON appeals to the United States Supreme Court, pursuant to Title 28 U.S.C. §1257(2) from the Memorandum Judgment filed November 18, 1987, which is the final order of the Appellate Department of the Superior Court, the highest State court in which a decision in the appellate

process could be had in the instant case, affirming the judgment of the Los Angeles Municipal Court rendered June 27, 1986.

Appellant timely filed a Petition for Rehearing and/or Application for Certification and Transfer to the Court of Appeal; both rehearing and certification were denied December 18, 1987.

Dated: January 11, 1988

RONALD L. BRANSON
Sui Juris
Appellant
In Propria Persona

CONSTITUTIONAL AND STATUTORY PROVISIONS

(Relevant portions)

Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may be general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

Article IV, Section 1, U.S. Constitution

1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

Article IV, Section 2, Cl. 1, U.S. Const.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall

issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.
Fourth Amendment, U.S. Constitution

No person shall...be deprived of life, liberty, or property, without due process of law;....
Fifth Amendment, U.S. Constitution

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdic-

tion the equal protection of the laws.
Fourteenth Amendment, Sec. 1, U.S. Const.

To constitute crime there must be unity of act and intent. In every crime or public offense there must exist a union, or joint operation of act and intent, or criminal negligence.
California Penal Code Section 20

Delaying to take person arrested before a magistrate. Every officer or other person, having arrested any person upon a criminal charge, who willfully delays to take such person before a magistrate having jurisdiction, to take his examination, is guilty of a misdemeanor.
California Penal Code Section 145.

The following persons are magistrates:
1. The judges of the Supreme Court

2. The judges of the courts of appeal.

3. The judges of the superior courts.

4. The judges of the municipal courts.

5. The judges of the justice courts.

California Penal Code Section 808

The defendant must in all cases be taken before the magistrate without unnecessary delay, and, in any event, within two days after his arrest, excluding Sundays and holidays; provided, however, that when the two days prescribed herein expire at a time when the court in which the magistrate is sitting is not in session, such time shall be extended to include the duration of the next regular court session on the judicial day immediately following. [1st parag. only]

California Penal Code Section 825

A peace officer may make an arrest in obedience to a warrant, or may, pursuant to

the authority granted him by the provisions of Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, without a warrant, arrest a person:

... (3) Whenever he has reasonable cause to believe that the person to be arrested gas committed a felony, whether or not a felony has in fact been committed.

California Penal Code Section 836

(a) When an arrest is made without a warrant by a peace officer or private person, the person arrested, if not otherwise released, shall, without unnecessary delay, be taken before the nearest or most accessible magistrate in the county in which the offense is triable, and a complaint stating the charge against the arrested person shall be laid before such magistrate.

California Penal Code Section 849(a)

If the defendant is in custody at the time he appears before the magistrate for arraignment and, if the public offense is a misdemeanor to which the defendant has pleaded not guilty, the magistrate, on motion of counsel for the defendant or the defendant, shall determine whether there is probable cause to believe that a public offense has been committed and that the defendant is guilty thereof.

California Penal Code Section 991(a)

.... The defendant shall be required to plead to such amendment or amended pleading forthwith, or, at the time fixed for pleading, if he has not yet pleaded and the trial or other proceeding shall continue as if the pleading had been originally filed as amended, unless the substantial rights of the defendant would be prejudiced thereby, in which event a reasonable post-

ponement, not longer than the ends of justice require, may be granted. ...

California Penal Code Section 1009

(relevant portion)

After his plea, the defendant is entitled to at least five days to prepare for trial.

California Penal Code Section 1049

No person shall either individually or in association with one or more other persons, willfully injure or tamper with any vehicle or the contents thereof or break or remove any part of a vehicle without the consent of the owner.

California Vehicle Code Section 10852.

* * *